

**SAMPLE - Continuous Absence – Exhaustion of Paid Leave - No Communication**

***[Agencies may consider dealing with the situation in stages. First a formal notice of the requirement for a written request for leave of absence. Then a letter could be sent regarding non-compliance and dismissal.]***

**[Date]**

**[Name]**

**[Address]**

Via **[Hand Delivery OR Certified Mail No. \_\_\_\_\_]**

Dear **[Mr./Ms. Last Name]**:

The purpose of this letter is to address your continuous absence from work since **[date]**, clarify your current employment status, and communicate my expectations and the consequences for your failure to meet these expectations. ***[Insert language expressing your concern for the employee's well being, long tenure of a valued employee, previous good work record, etc.]***

You have been continuously absent from work since **[date]**. Since you have exhausted your accrued leave and have not requested a leave of absence without pay, it is necessary that I place you on unauthorized leave in accordance with subsection 14.6 of the Division of Personnel's *Administrative Rule*, W. VA. CODE R. §143-1-1 *et seq.* If you request a leave of absence without pay within fifteen (15) calendar days following the date of this letter and provide appropriate medical substantiation, the unauthorized leave will be rescinded and you will be placed on a medical leave of absence without pay.

The following is a chronology of events surrounding your continuous absence:

***[Summarize the events regarding the agency's and the employee's absence reporting history for this continuous absence, i.e., e-mail communications, written correspondence, telephone calls to the employee's home, the employee's response or lack of, etc. Give some brief history of any other related accommodations, e.g. reduced or altered workload as an attempt to assist the employee in return to duty.]***

Although you were instructed to return to work on **[date]**, to date, I have had no further contact with you and I have not received medical certification of any incapacity or a request from you for a medical leave of absence without pay. The correct procedure for requesting and being granted a leave of absence without pay and the required documentation for such leave is located at Section 14 of the *Administrative Rule*, and a copy is enclosed for your review.

In addition to a copy of Section 14 of the *Administrative Rule*, I have enclosed the following prescribed forms for your completion. Both you and your physician/practitioner are required to complete documentation if it is your intention to request a medical leave of absence without pay ***[insert the forms***

***used by your agency which are either the DOP prescribed forms or the forms your agency's prescribed forms has chosen which have been approved by the DOP]:***

- [DOP- Prescribed Forms]: Application for Leave of Absence Without Pay and Physician's/Practitioner's Statement

OR

- **[Name of Agency Forms - Approved by DOP]**

You are a valued employee ***[if untrue, do not say.]***; however, as it is our mission to provide timely services to the public, I am obligated to ensure the overall efficiency of the agency by maintaining a full work force. Your failure to report for work on **[date]**, as scheduled, absent any information that documents a serious illness, and your failure to maintain appropriate and timely communication with your supervisor, compromises my ability to effectively plan, schedule, and assign work, which directly impacts the mission of the agency.

I have been very tolerant of your situation and have attempted to assist you; however, I cannot tolerate your failure to report for work as scheduled or to adhere to the procedures for requesting a medical leave of absence without pay. You are, therefore, directed to either return to work on **[date]** at **[time]** and report to me prior to beginning work, with a physician's statement certifying your period of incapacity and any limitations/restrictions on your ability to work, if applicable, or to request a leave of absence without pay according to the *Administrative Rule* no later than **[date – 15 calendar days from the date of this letter]**.

***[NOTE TO SUPERVISOR: If there has been previous communication with the employee and he or she has been made aware of requirement to submit documentation, it is suggested that this letter be modified to be a dismissal letter, without providing an opportunity to return.]***

Should you fail to follow this directive, I will conclude you have abandoned your position, and in such case, this letter will serve as notice of your dismissal from your position as a **[classification]** effective, **[date - 15 calendar days from the date of the letter.]**.

In such case, all property belonging to the State of West Virginia, which you have under your control or possession, should be returned either by mail to **[name and address]** or directly to **[name], [title]**, by close of business on **[date]** at a mutually agreed upon time and location. Such property shall include, but not be limited to: keys to any State offices, access cards, and identification cards and any other items of value such as cameras, computers, other information technology equipment, and State vehicles. You are not to enter the non-public areas of the **[agency/department name]** offices without prior authorization from me or an agent of my office.

This personnel action would be taken in accordance with subsection 12.2.c. of the *Administrative Rule*, and provides for a fifteen (15) calendar day notice period. Whereas you would be dismissed for job abandonment you would be ineligible for severance pay. You would, however, be paid for all annual leave accrued and unused as of your last working day.

You may respond to the matters of this letter, either in writing or in person, provided you do so within fifteen (15) calendar days of the date of this letter. Please contact my office at **[telephone number]** if

you wish to schedule an appointment. Further, if you have reason to believe the information contained in this letter is inaccurate, then you may respond in writing, provided your response is postmarked within fifteen (15) calendar days of the date of this letter.

Since failure to comply with the provisions of this letter will result in a dismissal, if such personnel action occurs, you have a right to grieve the dismissal through the West Virginia Public Employees Grievance Procedure, contained in W. VA. CODE §6C-2-1 *et seq.* If you choose to exercise your grievance rights, you must submit your grievance, on the prescribed form, within fifteen (15) working days of the effective date of this action, to **[name and address of Chief Administrator]** at Level One of the Procedure. As provided in the statute, you may proceed to Level Three of the Procedure by filing your grievance directly with the Public Employees Grievance Board upon the agreement of the chief administrator, or when dismissed, suspended without pay, or demoted or reclassified resulting in a loss of compensation or benefits. You must provide copies of your grievance accordingly to the Public Employees Grievance Board at 1596 Kanawha Boulevard, East, Charleston, West Virginia, 25311; **[agency copy - name and address]**; and the Director of the Division of Personnel, Building 6, Room B-416, State Capitol Complex, Charleston, West Virginia, 25305. Details regarding the grievance procedure, as well as grievance forms, are available at the Board's web site at [www.pegb.wv.gov](http://www.pegb.wv.gov) or you may telephone the Board at (304) 558-3361 or toll-free at (866) 747-6743.

Should dismissal occur, you may continue your Public Employees Insurance Agency (PEIA) insurance benefits for three (3) months after the end of the month in which you are removed from the payroll, at no added cost to you. See W. VA. CODE §5-16-13(c). Additionally, under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), you may be eligible for up to eighteen (18) months of continued health coverage; therefore, you may wish to contact your payroll office or PEIA, at (304) 558-7850, or 1-888-680-7342, for specific eligibility, coverage and premium information.

Sincerely,

**[Appropriate Signature Authority]**

Enclosures: Section 14, DOP *Administrative Rule*  
DOP Leave Request Forms **[OR agency forms]**

c: Agency Personnel File  
West Virginia Division of Personnel

**[OPTIONAL LANGUAGE - *If the employer meets with the employee and hand delivers the letter, the employer may request that the employee verify receipt by signing the following acknowledgment typed at the bottom of the letter.*]**

I have received a copy and am aware of the contents of the foregoing letter

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Employee Signature

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Date

**[OPTIONAL LANGUAGE - *If mailed via U. S. Postal Service, the following certification may be typed at the bottom of the letter.*]**

The undersigned certifies that the above letter / notification was mailed to **[name]** by first-class and certified mail, return receipt requested, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**[signature]**\_\_\_\_\_

**[typed name and title]**

**[NOTE: *Revised 6/2013. Ensure law, rule, and policy language is current.*]**